IN THE SUPREME COURT OF THE STATE OF ALASKA

RESOURCE DEVELOPMENT COUNCIL FOR ALASKA, INC.; ALASKA TRUCKING ASSOCIATION, INC.; ALASKA MINERS ASSOCIATION, INC.; ASSOCIATED GENERAL CONTRACTORS OF ALASKA; ALASKA CHAMBER; ALASKA SUPPORT INDUSTRY ALLIANCE, Appellants and Cross-Appellees, v. KEVIN MEYER, in his official capacity as Lt. Governor of the State of Alaska; GAIL FENUMIAI, in her capacity as Director of the Alaska Division of Elections; the STATE OF ALASKA, DIVISION OF ELECTIONS; Appellees, v. VOTE YES FOR ALASKA'S FAIR SHARE, Appellee and Cross-Appellant.	)	Supreme Court Nos. S-17834/S-17843

Trial Court Case No. 3AN-20-05901CI

THIRD JUDICIAL DISTRICT AT ANCHORAGE
HONORABLE THOMAS A. MATTHEWS

BRIEF OF CROSS-APPELLANT

Filed in the Supreme Court of
of the State of Alaska on July 28, 2020.

MEREDITH MONTGOMERY,
Clerk of the Appellate Courts

By_____
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AS 15.45.110. Circulation of petition; prohibitions and penalty

(a) The petitions may be circulated throughout the state only in person.

(b) Repealed by SLA 2000, ch. 82, § 92, eff. July 1, 2000 .

(c) A circulator may not receive payment or agree to receive payment that is greater than $1 a signature, and a person or an organization may not pay or agree to pay an amount that is greater than $1 a signature, for the collection of signatures on a petition.

(d) A person or organization may not knowingly pay, offer to pay, or cause to be paid money or other valuable thing to a person to sign or refrain from signing a petition.

(e) A person or organization that violates (c) or (d) of this section is guilty of a class B misdemeanor.

(f) In this section,

(1) ”organization” has the meaning given in AS 11.81.900 ;

(2) ”other valuable thing” has the meaning given in AS 15.56.030(d) ;

(3) ”person” has the meaning given in AS 11.81.900.

JURISDICTIONAL STATEMENT

Vote Yes for Alaska's Fair Share ("Fair Share") cross-appeals from the Final Judgment of Superior Court Judge Thomas Matthews, dated July 17, 2020 ("Final Judgment").[1] The Final Judgment was based on Judge Matthews' Order Regarding Motions to Dismiss and Motions for Summary Judgment ("Order").[2] This Court has jurisdiction under AS 22.05.010, Appellate Rule 202(a), and article IV, section 2 of the Alaska Constitution.

STATEMENT OF ISSUE PRESENTED FOR REVIEW

The question before this Court on cross-appeal is whether the "$1 a signature" language of AS 15.45.110(c) may plausibly be interpreted to limit only petition circulators paid on a "per-signature" basis, and not petition circulators paid on an hourly, weekly, or monthly basis. In this case, this narrower interpretation may avoid finding AS 15.45.110(c) to be an unconstitutional infringement on the petition circulators' rights to engage in political speech.

Petition circulators are engaged in core political speech when gathering signatures during the initiative process. With one narrow exception, the courts have struck down restrictions to petition circulators' compensation as an unconstitutional infringement on their free speech rights since the U.S. Supreme Court's decision in *Meyer v. Grant*.[3] As *Prete*[4] represents, the narrow exception to have survived constitutional scrutiny is when

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1 [Exc. 257]
2 [Exc. 227]
3 *Meyer v. Grant*, 486 U.S. 414 (1988).
4 *Prete v. Bradbury*, 438 F.3d 949 (9th Cir. 2006).

the restriction is to compensation based on the number of signatures gathered, there is evidence of signature fraud, and all other forms of compensation (hourly, weekly, or monthly) are permitted.

This appeal concerns petition circulators who were paid based on a monthly salary and not based on the number of signatures they gathered. AS 15.45.110(c) provides, "A circulator may not receive payment or agree to receive payment that is greater than $1 a signature, and a person or an organization may not pay or agree to pay an amount that is greater than $1 a signature, for the collection of signatures on a petition." The superior court interpreted the "$1 a signature" limitation broadly to apply to all petition circulators whether they were paid based on an hourly, weekly, or monthly salary or based on the number of signatures they gathered. Given that a broad interpretation would mean a severe restriction on petition circulators' rights to engage in political speech, the superior court properly held the "$1 a signature restriction" was an unconstitutional infringement on political speech.[5]

The superior court considered but rejected a narrower interpretation of AS 15.45.110(c), concluding it "cannot construe the statute to mean that monthly, hourly or salary type payments are permitted when the amount paid exceeds $1 per signature."[6] This cross-appeal presents the alternative argument that AS 15.45.110(c) may be plausibly construed to avoid a finding of constitutional infirmity by more narrowly construing the "$1 a signature" language to apply only to petition circulators paid on a "per-signature"

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[5] Order at 19-20. [Exc. 245-46]

[6] Order at 12. [Exc. 238]

basis. Read narrowly to only apply to "per-signature" compensation, the "$1 a signature" restriction in AS 15.45.110(c) may escape its obvious constitutional infirmities based on the reasoning of *Prete*.[7] Given this Court's prior holdings that when a statute may be read more narrowly to avoid constitutional infirmities, case law "directs that we must do so."[8] Fair Share believes its alternative argument has merit and should be considered by this Court in the event it does not affirm the superior court opinion on constitutional grounds.

SUMMARY OF POSITION

Appellants came to the superior court seeking the disenfranchisement of 39,149 Alaskan voters and the removal of the Fair Share Act initiative from the ballot. The core of Appellants' case is their assertion that the petition certifications, which on their face were properly done, contain inaccurate information regarding the petition circulators' payment. Appellants did not allege a single signature verified by the Division of Elections was not a valid signature of an Alaskan voter. Nor did Appellants allege a single petition circulator made an inappropriate or untruthful comment while circulating the Fair Share Act petition.

Despite a dearth of authority supporting their legal positions under circumstances similar to this case, Appellants brought this legal action suggesting they did so out of concern for the integrity of the initiative process.[9] Appellants' concern for the integrity of

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[7] In advancing this narrower interpretation, Fair Share acknowledges that the lack of even an allegation of signature fraud in this case may reasonably result in even its narrower interpretation of AS 15.45.110)(c) failing constitutional scrutiny.

[8] *Alaskans for a Common Language, Inc. v. Kritz*, 170 P.3d 183, 192 (Alaska 2007).

[9] Perhaps Appellants make this suggestion as explanation for why they are bringing this legal action when they lack any direct financial interest in the Fair Share Act, which only

the initiative process seems highly implausible. Appellants have been unable to articulate how the integrity of the initiative process is put at risk by having Alaskans vote on the Fair Share Act. Appellants expressed no concern when other initiative sponsors in current and past elections relied upon the same petition circulators to gather signatures. Appellants have no direct financial stake in the Fair Share Act, and are, instead, acting as mere surrogates for the major oil producers.[10] In fact, Appellants' arguments, if successful, would eviscerate the initiative process in Alaska, transforming it from an act of direct democracy into a technical and litigious administrative or criminal proceeding before the lieutenant governor and the Alaska courts. Appellants are seeking to disenfranchise the Alaskan voters who have signed petition booklets petitioning to have the Fair Share Act placed on the ballot and to erode the constitutional rights of all Alaskans to vote on the Fair Share Act this November. Frankly, Appellants' efforts in this appeal seem more designed to subvert rather than protect the integrity of the initiative process in Alaska.

As interpreted by Appellants, AS 15.45.110(c) represents a severe burden on the constitutional rights of Alaskans and petition circulators to engage in political speech. Statutes that create such a burden are subject to strict scrutiny and are narrowly construed

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applies to three major oil producers. Indeed, Appellants' Alaskan members would actually stand to benefit along with the Alaskan economy when the Fair Share Act passes and $1 billion per year more of the wealth generated from our oil remains in Alaska.

[10] Three major oil producers will be directly impacted by the Fair Share Act. They would have to pay roughly $1 billion per year more in production taxes and would have to reveal their profits for our three largest and most profitable oil fields (the Prudhoe Bay Unit, Kuparuk River Unit, and the Colville River Unit). Appellants' concern for the impacts of the Fair Share Act on the three major producers for whom they are acting as surrogates far better explains Appellants' actions than their feigned concern for the initiative process.

so as not to unnecessarily intrude into fundamental constitutional rights. In fact, the constitutional protection afforded political speech has repeatedly been held to be "at its zenith" when applied to petition circulators because their activities are considered "core political speech," involving "interactive communication concerning political change."[11] Appellants' strained and expansive interpretations of the underlying statutes wither quickly under proper constitutional scrutiny and rules of construction.

Appellants claim that the compensation of the petition circulators may support Appellants' efforts to disenfranchise Alaskan voters and keep a certified initiative off the ballot.[12] It does not. The leading case in this area concerned a limitation by Colorado on the use of paid petition circulators.[13] In *Meyer*, the U.S. Supreme Court held it was a case involving a "limitation on political expression subject to exacting scrutiny" and that such a restriction violated the First Amendment rights of the petition circulators.[14] In so holding, the Court expressly rejected the "State's interest in protecting the integrity of the initiative process" as a justification because the state had less intrusive means for protecting such an interest and because the Court was unwilling to accept that paid petition circulators, who

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[11] *Nader v. Brewer*, 531 F.3d 1028, 1035 (9th Cir. 2008).

[12] Appellants' Complaint at 7-8 ("AS 15.45.130 provides, in relevant part, that in 'determining the sufficiency of the petition, the lieutenant governor may not count subscriptions on petitions not properly certified at the time of filing or corrected before the subscriptions are counted. . . . Many of the affidavits accompanying the 544 petition booklets by the individuals working for Advanced Micro Targeting to circulate petitions in support of 190GTX are false, and therefore not properly certified, because these individuals were paid in excess of $1 per signature for the collection of signatures on the 190GTX petitions."). [Exc. 007-8]

[13] *Meyer*, 486 U.S. 414.

[14] *Meyer*, 486 U.S. at 420-28.

depend upon their reputations for integrity for future assignments, were more likely to accept false signatures than volunteers.[15]

AS 15.45.110(c) limits per-signature payments to $1 per signature. It does not address or limit any other form of payment to petition circulators except for the "per-signature" limitation. The sponsor of the statute was clear that he initially intended to prohibit all "per signature" compensation; but out of concern for the *Meyer* decision, he chose to limit "per signature" compensation to $1 a signature.[16] In offering the statute, he was clear that "[p]ayment would still be allowed by the hour or any other method."[17] He also explained his primary concern was to limit "bounty hunters" recovering payments on a per-signature basis.[18]

As the original sponsor's language evolved through the legislative process to accommodate the concern for *Meyer*, an exemption for salaried employees was deleted, but there was never any suggestion by a legislator supporting the amended language that the "$1 a signature" limitation should be applied to salaried petition circulators. In fact, to the contrary, the legislators proposing the amended language discussed the difficulties with applying the "$1 a signature" limitation to salaried petition circulators. Given its language and the relevant legislative history, AS 15.45.110(c) should be read to limit "per-signature" compensation to "$1 a signature." It may not reasonably be read to apply broadly and casually to limit all compensation to petition circulators or it would violate constitutionally

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[15] *Meyer*, 486 U.S. at 425-28.
[16] Tr. 21:3-11 (Alaska Senate Judiciary Committee, March 18, 1998). [Exc. 101]
[17] *Id.* at Tr. 21:4-5. [Exc. 101]
[18] *Id.* at Tr. 20:19-21. [Exc. 101]

protected rights to free speech. There is no express language in AS 15.45.110(c) requiring such a broad interpretation, nor is there any legislative history expressing a legitimate state interest from which to imply such a broad interpretation.

The superior court did not weigh heavily enough its obligation to narrowly read AS 15.45.110(c) to avoid unconstitutional infringements on the rights of citizens to engage in direct democracy and political speech. When the statute is read to avoid the unconstitutional infringements on our core constitutional rights, the "$1 a signature" restriction may only reasonably be read to restrict "per-signature" compensation. No state since *Meyer* has sought to restrict the compensation of salaried petition gatherers, nor is there any possible state interest in doing so that would survive constitutional scrutiny. The distinction between "per-signature" compensation and hourly, weekly, or monthly compensation is important to this case because, while there may be a state interest in reducing signature fraud which may survive limited constitutional scrutiny due to the "bounty-hunting" aspects of "per-signature" compensation, there is no possible or viable state interest that supports limiting other forms of compensation under any standard of constitutional scrutiny.

In this case, Appellants allege petition circulators were paid a monthly salary and have not alleged a single instance of signature fraud.[19] On its face, payment of a monthly

[19] Appellants' Complaint at 5 ("Advanced Micro Targeting offered to pay an amount that is greater than $1 per signature for the collection of signatures on a petition by advertising that it would pay signature gatherers $3,500 - $4,000 per month plus bonus, and that it expected 80-100 signatures per day, six days per week in return for such compensation.") [Exc. 005]

salary is not a per-signature payment and does not violate the "$1 a signature" limitation on payments set forth in AS 15.45.110(c).

Appellants then theorized the appropriate remedy for the alleged violation of AS 15.45.110(c) is to invalidate verified Alaskan signatures and remove a certified initiative from the ballot.[20] Even assuming every allegation by Appellants were true, there is no statutory or legal basis for the remedy Appellants seek under the circumstances of this case. In fact, AS 15.45.110(e) specifically provides a criminal remedy for violation of AS 15.45.110(c), and both the lieutenant governor and the superior court rightly rejected Appellants' effort to use circulator compensation as a basis to disenfranchise tens of thousands of Alaskans who had nothing to do with the compensation in question. The superior court also found AS 15.45.110(c) to be an unconstitutional restriction on political speech but, in doing so, rejected a narrower interpretation of the statute that may survive constitutional scrutiny. Because the plain text and legislative history of AS 15.45.110(c) reasonably support such a narrower interpretation, and the doctrine of constitutional avoidance directs such an interpretation where plausible,[21] the superior court erred in disregarding this interpretation. Fair Share fully agrees that AS 15.45.110(c) is

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[20] *See* n.12 *supra.*

[21] *State v. Planned Parenthood of the Great Northwest*, 436 P.3d 984, 992 n.40 (Alaska 2019) ("[t]he doctrine of constitutional avoidance 'is a tool for choosing between competing plausible interpretations of a statutory text,' such that, if the statute would be unconstitutional under one and valid under the other, our plain duty is to adopt that which will save the Act") (quoting *Estate of Kim ex rel. Alexander v. Coxe*, 295 P.3d 380, 388 (Alaska 2013)); *see also Virginia v. American Booksellers Ass'n, Inc.*, 484 U.S. 383, 397 (1988) ("It has long been a tenet of First Amendment law that in determining a facial challenge to a statute, if it be 'readily susceptible' to a narrowing construction that would make it constitutional, it will be upheld" (citations omitted).

unconstitutional as interpreted by Appellants and the superior court, but does not agree that such a broad interpretation was the only plausible interpretation under the doctrine of constitutional avoidance.

STANDARD OF REVIEW

"The goal of statutory construction is to give effect to the legislature's intent, with due regard for the meaning the statutory language conveys to others."[22] This involves consideration of "three factors: the language of the statute, the legislative history, and the legislative purpose behind the statute."[23] This Court adopts "the rule of law that is most persuasive in light of precedent, reason, and policy"[24] and has "rejected a mechanical application of the plain meaning rule in favor or a sliding scale approach."[25] The language of the statute is the "primary guide," and it is presumed "that every word in the statute was intentionally included, and must be given some effect."[26] "The language of a statute is 'construed in accordance with [its] common usage,' unless the word or phrase in question has 'acquired a peculiar meaning, by virtue of statutory definition or judicial construction.'"[27]

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[22] *Tesoro Alaska Petroleum Co. v. Kenai Pipe Line Co.*, 746 P.2d 896, 905 (Alaska 1987).
[23] *Western Star Trucks, Inc. v. Big Iran Equipment Service, Inc.*, 101 P.3d 1047, 1050 (Alaska 2004).
[24] *L.D.G., Inc. v. Brown*, 211 P.3d 1110, 1133 (Alaska 2009) (citing *Enders v. Parker*, 66 P.3d 11, 13-14 (Alaska 2003)).
[25] *Municipality of Anchorage v. Suzuki*, 41 P.3d 147, 150 (Alaska 2002).
[26] *Id.* at 151.
[27] *Id.* at 150-51 (quoting *Muller v. BP Exploration (Alaska) Inc.*, 923 P.2d 783, 788 (Alaska 1996)).

ARGUMENT

I. THE SUPERIOR COURT ERRED IN INTERPRETING AS 15.45.110(c) TO RESTRICT FORMS OF COMPENSATION OTHER THAN PAYMENT PER SIGNATURE

A. The Plain Text of the Statute Does Not Address Other Forms of Compensation.

AS 15.45.110(c) states: "A circulator may not receive payment or agree to receive payment that is greater than $1 a signature, and a person or an organization may not pay or agree to pay an amount that is greater than $1 a signature, for the collection of signatures on a petition." On its face, the statute deals with per-signature compensation of petition circulators, and nothing more. The superior court erred in interpreting the phrase "an amount that is greater than $1 a signature" to mean that if a circulator "received [a salaried] payment that ended up being greater than $1 per signature, no matter how it was received, it seems the statute would prohibit it."[28]

The practical—or rather, impractical and untenable—application of a broad interpretation of AS 15.45.110(c) must be considered. Fair share needed 28,501 verified signatures to place the Fair Share Act on the ballot. A broad interpretation of the "$1 a signature" would mean Fair Share would have to gather 28,501 signatures including signatures of at least seven percent of the votes from the last election in 30 of the 40 House Districts throughout Alaska for $28,501. Such a restriction broadly applied to all forms of compensation would be a severe and untenable restriction on political speech under the geographically challenging circumstances of Alaska. Moreover, there is no possible state

[28] Order at 9. [Exc. 235]

interest to be served in imposing such a severe and untenable restriction on political speech on the initiative process in Alaska. As a practical matter, none of the last three initiatives placed on the ballot in Alaska met the restriction imposed by such a broad interpretation, nor would any initiative be likely to in the future. Whether one likes the political reality or not, the exercise of direct democracy through initiative often requires substantial sums of money to gather signatures across Alaska.

B. The Legislative History of the Statute Does Not Support Applying Its Restriction to Other Forms of Compensation.

Because the text of the statute is plain on its face, the Court need not look beyond it in rejecting Appellants' overbroad interpretation adopted by the superior court. But if the Court chooses to do so, the purpose of the statute is also plain. Senator Sharp sponsored AS 15.45.110(c) to prohibit "per-signature" compensation for the express purpose of countering "signature bounty hunters" while acknowledging the constitutional limitations on more broadly banning compensation for circulators.[29] In the House, Representative Davies emphasized the policy concern with "bounty hunter" circulators with a direct incentive to gather as many signatures as possible: "In other words, if they're trying to get–they're going to get paid by the piece and by each signature, they're going to be much more aggressive about going after every individual person out there than otherwise."[30] Representatives Grussendorf and Mulder expressed indefinite (and audibly indiscernible)

[29] Senate Judiciary Committee meeting (March 18, 1998) at Tr. 20:16-21:11. [Exc. 101]
[30] House Finance Committee meeting (March 8, 1998) at Tr. 76:15-77:5. [Exc. 104]

concerns about how hourly compensation might interact with Representative Mulder's amendment to limit rather than ban "per-signature" compensation to $1 per signature:

> REPRESENTATIVE GRUSSENDORF: Yeah. Thank you, Mr. Chairman. We have a suggestion as to the hourly rate, but I am concerned if you pay an hourly rate, then the person who is sponsoring or bankrolling a payroll as such (indiscernible) reductions and everything (indiscernible) workman's comp to other problems that come in there, or maybe even a (indiscernible) system that within an hour we expect you have X amount of petitions-or signatures. I don't know if we can get by–you know, around that that way.
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> CHAIRMAN THERRIAULT: Representative Mulder.
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> REPRESENTATIVE MULDER: Thank you, Mr. Chairman. I–you're exactly right, Representative Grussendorf. If you do a whole–putting out the whole new realm of requirements in terms of being a (indiscernible)–or being an employer.[31]

Chairman Therriault described Representative Mulder's amendment as allowing "pay per signature up to $1 per signature, but it would cap it at that amount" in response to the constitutional concerns with the outright ban.[32] Representative Mulder continued:

> So I think it's a modest amount, Mr. Chairman. It still does not put such an onus on that makes it totally unworkable to have a payment, but it does also–by having such a low payment, it does stretch out the time requirement that's going to be expected in order to get the initiative. If you pay $2 a signature or $2.50 a signature, you can collect signatures pretty doggone fast. A block of signatures slows out that process quite a bit longer. So I think it's a modest amount.
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> CHAIRMAN THERRIAULT: Representative Davies.
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> REPRESENTATIVE DAVIES: I don't understand what the state interest is in slowing down getting signatures. But let me just say one other thing about the--the amendment would limit the amount of money that you could pay, and the existing language only limits the way in which you make

[31] House Finance Committee meeting (March 8, 1998) at Tr. 77:9-24. [Exc. 104]
[32] *Id.* at Tr. 75:22-76:4. [Exc. 104]

> payment. It doesn't limit the amount. You could pay the guy 100 bucks an hour if you want. There's no limit to how much you're paying.
>
> And because that difference-I think that the existing language is much less subject to the constitutional challenge than the amendment. The amendment gets closer to a–in fact, is a limit. It's a hard limit in terms of how much you can pay. And as that–and I agree that it's different than the exact court case, but I think it's closer to the court case than the language that's in the bill, and for that reason is more likely to be overturned than the bill–than the language in the bill.[33]

Importantly, Representative Davies' comments were not the comments of a legislator explaining the amendments he was sponsoring or supporting but were comments by someone opposed to the amendment being offered. The sponsor of the amendment, Representative Mulder, said nothing in response to Representative Davies' comments. In fact, Representative Mulder's last comments were simply to agree with Representative Grussendorf that the $1 per signature would not work well with an hourly employee—a comment that implies an intention not to apply the "$1 a signature" restriction to an hourly employee.

To be fair, Representative Mulder's amendment made several changes to the original language of Senator Sharp's bill including removing the following language: "This subsection does not prohibit a sponsor from being paid an amount that is not based on the number of signatures collected." Removing this qualifier from the original ban does not, however, mean the other methods of compensation are similarly restricted, particularly when no one supporting the amendment expressed the intention to completely reverse the bill's purpose to avoid "bounty hunters" or offered any additional policy rationale that

[33] House Finance Committee meeting (March 8, 1998) at Tr. 78:6-79:7. [Exc. 195]

could be used to justify such a board interpretation. Indeed, the clarification offered by the removed subsection became unnecessary when the outright ban on per-signature compensation was lifted.

The original sponsor's clear intent, the Chairman's clear description of the amendment proposed, the amendment sponsor's clear concerns with applying the "$1 a signature" to hourly employees, the backdrop of constitutional concerns, and the only articulated policy basis for any limitation which only concerns "per-signature" compensation all weigh heavily against broadly interpreting AS 15.45.110(c) as restricting more than the "per-signature" form of compensation to "$1 a signature."[34] Accordingly, this Court should narrowly interpret and apply AS 15.45.110(c) to avoid constitutional infringement on core constitutional rights and to achieve its stated core policy purpose—and not the exact opposite.

C. The Doctrine of Constitutional Avoidance Directs the Adoption of a Narrower Interpretation to Save the Statute.

If a statutory text is susceptible to more than one plausible interpretation, and one of which avoids infringement on core constitutional rights, the doctrine of constitutional avoidance directs courts to adopt the interpretation that does not result in such an infringement.[35] This Court has held:

> Our precedent clearly establishes that "courts should if possible construe statutes so as to avoid the danger of unconstitutionality." To this end, "[a] party raising a constitutional challenge to a statute bears the burden of

[34] Appellants and the superior court also referred to a subsequent bill that did not ultimately affect AS 15.45.110(c), but other discussions more than a decade after passage are irrelevant to the policy discussion underlying the enactment of the statute.
[35] *See* n.21 *supra.*

> demonstrating the constitutional violation. A presumption of constitutionality applies, and doubts are resolved in favor of constitutionality." Thus, if we are able to avoid a finding of constitutional infirmity by construing the [law in question . . .], our case law directs that we must do so.[36]

The well-established rule that courts should if possible construe statutes so as to avoid the danger of unconstitutionality "recognizes that the legislature, like the courts, is pledged to support the state and federal constitutions and that the courts, therefore, should presume that the legislature sought to act within constitutional limits."[37]

As the superior court's analysis demonstrates,[38] the danger of unconstitutionality is acute in this area of legislation, as the Alaska Constitution protects free speech "at least as broad[ly] as the U.S. Constitution"[39] and "in a more explicit and direct manner."[40] Once the Court determines that a law impacts constitutional speech, it next addresses whether the act survives constitutional scrutiny with a multi-part inquiry.[41] First, the Court considers how the law impacts protected speech, for this determines the level of scrutiny to which the law must be subjected; next, the Court identifies and evaluates the government's interest in impacting protected speech; and lastly determines how closely the means chosen by the government fit the ends served by the law.[42]

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[36] *Alaskans for a Common Language*, 170 P.3d at 192-93 (internal citations omitted).
[37] *State, Dept. of Revenue v. Andrade*, 23 P.3d 58, 71 (Alaska 2001) (quoting *Kimoktoak v. State*, 584 P.2d 25, 31 (Alaska 1978).
[38] Order at 12-20. [Exc. 238-246]
[39] *Alaskans for a Common Language*, 170 P.3d at 198 (quoting *Vogler v. Miller*, 651 P.2d 1, 3 (Alaska 1982)).
[40] *Id.* (quoting *Messerli v. State*, 626 P.2d 81, 83 (Alaska 1980)).
[41] *Id.* at 204.
[42] *Id*.

Content-neutral restrictions on free speech are subject to intermediate scrutiny, which means that they are "valid provided that they are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information."[43] But a content-neutral restriction will be subject to strict scrutiny if it imposes a prior restraint on speech.[44] "A prior restraint is an official restriction imposed upon speech or other forms of expression in advance of actual publication."[45] Both the federal and Alaska Constitutions look with disfavor on broad-based prior restraint, and such restraints bear a heavy presumption against their constitutionality because of their chilling effect on potentially protected speech.[46] "[O]nly a regulation which impinges on the right to speak and associate to the least degree possible consistent with the achievement of the state's legitimate goals will pass constitutional muster."[47]

Here, the superior court's interpretation of AS 15.45.110(c) as encompassing all forms of compensation for signature gatherers amounts to a severe restriction and a prior restraint on petition circulation as a whole. Even the limited restriction to "per-signature" compensation only survived constitutional muster because the Oregon law was supported

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[43] *Id.* at 205 (quoting *Clark v. Comty. for Creative Non–Violence*, 468 U.S. 288, 293 (1984)).
[44] *Id.* (citing *Org. for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971).
[45] *Id.* (quoting *State v. Haley*, 687 P.2d 305, 315 (Alaska 1984)).
[46] *Id.* (citing *U.S. v. Nat'l Treasury Employees Union*, 513 U.S. 454, 467-68 & n. 11 (1995)).
[47] *Vogler v. Miller*, 651 P.2d 1, 5 (Alaska 1982) (citing *Mickens v. City of Kodiak*, 640 P.2d 818, 822 (Alaska 1982)).

by evidence of signature fraud, and the restriction to compensation did not apply to hourly, weekly, or monthly forms of compensation.[48] The State's interest in combating fraud is an important interest, but the *Meyer* court explicitly rejected initiative fraud as a legitimate basis to directly restrict free speech.[49] Even if the rationale was not rejected, the Appellants' interpretation of the statute accepted by the superior court is not narrowly tailored to serve that interest. On the contrary, this interpretation is broadly tailored to effectively restrict all compensation for petition circulators, the exact opposite of both the *Prete* court's reasoning and Senator Sharp's intention in bringing forth the bill.

In *Prete*,[50] the Ninth Circuit applied *Meyer* to an Oregon law prohibiting per-signature payment of initiative-petition circulators but not any other method of compensation.[51] The court considered the Eighth Circuit's decision upholding a ban on per-signature payments in North Dakota:

> In *Initiative & Referendum Inst. v. Jaeger*, 241 F.3d 614 (8th Cir. 2001), the Eighth Circuit distinguished North Dakota's prohibition on paying initiative-petition circulators "on a basis related to the number of signatures obtained" (i.e., the same type of restriction at issue here) from the complete prohibition on paid petition circulators in *Meyer*. In *Jaeger*, the court noted that the state had an "important interest in preventing signature fraud" in the initiative process, and that the state had supported that interest with evidence that paying petition circulators per signature encouraged such fraud. *Id.* at 618.[52]

As in *Prete* and *Jaeger*, no state interest has been offered here to restrict compensation for signature gathering outside of the per-signature context. The *Prete* court

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[48] *Prete*, 438 F.3d at 963.
[49] *Meyer*, 486 U.S. 414, 425-26.
[50] 438 F.3d 949 (9th Cir. 2006).
[51] *Prete*, 438 F.3d at 952.
[52] *Prete*, 438 F.3d at 963.

emphasized that its application of less-than-strict scrutiny was only possible because the scope of the Oregon ban was limited to per-signature petition payments only.[53] The *Prete* court also noted that the Oregon ban "barr[ed] only payment of petition circulators on the basis of the number of signatures gathered" and did not "prohibit adjusting salaries or paying bonuses according to validity rates or productivity."[54]

The interpretation of AS 15.45.110(c) accepted by the superior court is far from the limited scope of *Prete*. On the contrary, the notion of restricting all forms of compensation for petition circulators to an amount equal to $1 per signature actually gathered—de facto restricting all forms of compensation for petition circulators—imposes the exact type of unjustified infringement on political speech the U.S. Supreme Court rejected in Meyer.

As previously discussed, Appellants' interpretation is a severe restriction on all compensation to petition circulators. Under these circumstances, both *Meyer* and *Prete* highlight the fatal constitutional flaws of Appellants' broad interpretation in this case and would demand strict scrutiny of AS 15.45.110(c) to prevent unconstitutional infringement into the rights to political speech. As the superior court correctly concluded, Appellants' broad interpretation would not survive such scrutiny; but the superior court did not then link this conclusion back to the doctrine of constitutional avoidance to find a narrow interpretation of the statute that applies its restriction only to per-signature compensation. This Court should apply the doctrine and use the narrower interpretation to avoid unnecessary intrusion into political speech.

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[53] *Id*.
[54] *Id*. at 968.

CONCLUSION

Appellants came to the superior court with an unprecedented claim for relief: disenfranchisement of nearly 40,000 Alaskans and removal of the Fair Share Act from the ballot for the alleged violation of a "$1 a signature" restriction on "per-signature" compensation for petition circulators. Even though they alleged no flaw with any of the verified signatures or how they were collected and claimed the circulators were paid by salary rather than per signature as stated under the statute, they nonetheless claimed that AS 15.45.130 required the lieutenant governor to invalidate all signatures collected by these signatures. The lieutenant governor and the superior court rightly rejected that that remedy was available, but the superior court also addressed the scope and constitutionality of AS 15.45.110(c). In doing so, the superior court gave short shrift to the plain text and legislative history of the provision and disregarded the doctrine of constitutional avoidance.

The statute is plain on its face: petition circulators may not be paid more than $1 per signature, and other forms of payment are not addressed. Looking beyond the plain text of the statute, the legislative history indicates the sponsor of the bill intended to ban per-signature payment without affecting other forms of compensation, but due to constitutional concerns, this outright ban was narrowed via amendment to a $1-per-signature limit. The superior court accepted Appellants' reading that removal of a subsection that limited the original ban to per-signature payment as extending the $1-per-signature limit to all forms of compensation, but the record shows no stated intention or policy rationale for doing so. On the contrary, the subsection was no longer needed with the removal of the outright ban, and extending the limit to all forms of compensation forces all petition circulators into the

very per-signature compensation that the legislators intended to mitigate. The only legitimate purpose of the statute—to mitigate the financial incentive for petition circulators to engage in misconduct, which as the superior court held was constitutionally insufficient[55]—counters the interpretation that the superior court adopted. In light of the plain text and clear purpose of the statute, the doctrine of constitutional avoidance directs this Court to a narrower interpretation and minimizes the constitutional infringement of the petition circulator's constitutional rights to free speech.

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[55] Order at 17-19. [Exc. 243-45]